

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**FASTWING INVESTMENT HOLDING  
LTD AND ALBATROSS COMMERCIAL  
LTD**

PLAINTIFFS,

**VS.**

**BOMBARDIER, INC.; BOMBARDIER, INC. d/b/a BOMBARDIER AEROSPACE CORPORATION; and LEARJET INC.**

DEFENDANTS.

CIVIL ACTION NO. \_\_\_\_\_

**NOTICE OF REMOVAL OF ACTION UNDER**  
**28 U.S.C. § 1441(b) (DIVERSITY)**

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant BOMBARDIER INC. hereby removes to this Court the state court action described below:

1. On December 9, 2009, an action was commenced in the 160th Judicial District Court of the State of Texas in and for Dallas County, Texas, entitled FASTWING INVESTMENT HOLDING LTD et al vs. BOMBARDIER, INC.; BOMBARDIER, INC. d/b/a BOMBARDIER AEROSPACE CORPORATION; and LEARJET INC. as Cause Number 09-16469. A copy of the Plaintiffs' Original Petition is attached hereto as Exhibit "A." As of the filing of this removal, Defendants have not been served with Plaintiffs' Original Petition. No Defendant has filed an Answer in the state court action. The state court docket sheet is attached hereto as Exhibit "B."

2. However, Plaintiffs' action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 and is one which may be removed to this Court by Defendant BOMBARDIER INC. pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between Plaintiffs, which are both foreign corporations and not citizens of any state of the United States, and Defendants. Defendant BOMBARDIER INC. is a citizen of Canada, Defendant BOMBARDIER AEROSPACE CORPORATION, is a citizen of Delaware and Texas, and LEARJET INC. is a citizen of Delaware and Kansas. The matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Plaintiffs' claims are based on allegations of fraud, negligent misrepresentation, and breaches of contract arising from contractual agreements to purchase of two (2) Bombardier Global Express XRS business jet aircraft. Plaintiffs seek damages in excess of \$8,000,000.00.

3. Defendant BOMBARDIER INC. is a Canadian corporation. Defendant BOMBARDIER AEROSPACE CORPORATION is a Delaware corporation<sup>1</sup> with its principal place of business in Texas. Defendant LEARJET INC. is a Delaware corporation with its principal place of business in Kansas. Plaintiffs aver that they are each British Virgin Islands corporations. Accordingly, complete diversity exists. (The Plaintiffs have also named "Bombardier, Inc. d/b/a Bombardier Aerospace" as a party defendant in this case, however, "Bombardier Aerospace" is not a legal entity and need not be considered a party in this removal.)

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<sup>1</sup> Plaintiff alleges that BOMBARDIER AEROSPACE CORPORATION is a Texas corporation, however, that is untrue as will be discussed herein below.

4. In accordance with 28 U.S.C. § 1441(a), this matter is being removed to the U.S. District Court for the Northern District of Texas, Dallas Division because this Court is the court for the district and division embracing the place where such action is pending, i.e., Dallas County, Texas.

5. In further support of this removal, Defendant has attached hereto true and correct copies of documentation proving that BOMBARDIER AEROSPACE CORPORATION is a Delaware corporation, originally formed in 1977 as Canadair International Inc. Exhibit "C" is a copy of the original Certificate of Incorporation for "Canadair International Inc." dated January 14, 1977. Exhibit "D" is a copy of a certificate from the Delaware Secretary of State attesting to the facts that: (1) Canadair International Inc. changed its corporate title to "Canadair Inc." on January 21, 1977; (2) Canadair Inc changed its corporate title to "Canadair Challenger Marketing Inc." on August 28, 1984; and (3) Canadair Challenger Marketing Inc. changed its corporate title to "Canadair Challenger Inc." on October 17, 1984. Exhibit "E" is a certificate from the Delaware Secretary of State attesting to the fact that Canadair Challenger Inc. changed its corporate title to "Bombardier Aerospace Corporation" on March 15 1996.

6. Normally, the Texas citizenship of BOMBARDIER AEROSPACE CORPORATION would make it a "local defendant" and preclude removal. However, in this case, Defendant would show that Plaintiffs' claims against BOMBARDIER AEROSPACE CORPORATION are a sham and that there is no possible cause of action by Plaintiff for any of the claims it raises in its Original Petition because the contract made the basis of this suit was between Plaintiffs and Defendant BOMBARDIER INC. only. Accordingly, the

Texas citizenship of BOMBARDIER AEROSPACE CORPORATION can and should be disregarded in determining whether or not this case can be properly removed.

7. Whether or not the citizenship of BOMBARDIER AEROSPACE CORPORATION is disregarded because it is fraudulently joined, this case is still removable pursuant to 28 U.S.C. §1441(b) because BOMBARDIER AEROSPACE CORPORATION has not been served in this case.

Respectfully submitted,

GENDRY & SPRAGUE, P.C.  
645 Lockhill Selma  
San Antonio, Texas 78216-5707  
Telephone: (210) 349-0511  
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By: 

RON A. SPRAGUE  
State Bar No. 18962100  
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ATTORNEYS FOR DEFENDANT,  
BOMBARDIER INC.

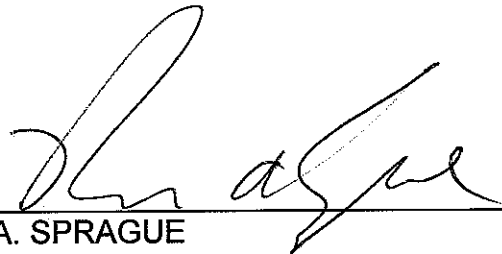
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing pleading was mailed, certified mail, return receipt requested, to:

Mr. Charles H. Smith  
SMITH & MOORE PLLC  
3030 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201

Mr. Patrick Bailey  
Bailey & Partners  
2800 28<sup>th</sup> Street, Suite 200  
Santa Monica, California 90405

on this 11<sup>th</sup> day of December, 2009.

  
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RON A. SPRAGUE

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## INDEX OF EXHIBITS

- A. Plaintiff's Original Petition  
Filed in State Court on December 9, 2009
- B. State Court Docket Sheet
- C. Certificate of Incorporation for "Canadair International Inc." dated January 14, 1977.
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